

09:30:56

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ORIGINAL

-----x
SABINA PARADI, a Judicially Declared
Incapacitated Person by the Guardians
of her Person and Property, BODO PARADY
and MARY MOORE,

Plaintiffs,

Civil Action No.

-against-

07 CIV 3640 (JCF)

MICHAEL R. PHILLIPS,

Defendant.

-----x

August 21, 2007

9:47 a.m.

Videotape Deposition of MICHAEL R. PHILLIPS,
taken by Plaintiff, pursuant to Notice, at the
offices of DeCaro & Kaplen, 20 Vesey Street, New
York, New York, before William Visconti, a
Shorthand Reporter and Notary Public within and
for the State of New York.

A P P E A R A N C E S:

DE CARO & KAPLEN

Attorneys for Plaintiffs

20 Vesey Street

New York, New York 10007

BY: MICHAEL V. KAPLEN, ESQ.

JAMES D. BUTLER, ESQ

Attorneys for Defendant

591 Summit Avenue

Jersey City, New Jersey 07306

ALSO PRESENT:

SARAH ENGELMAN, Videographer

SUSAN PHILLIPS

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IT IS HEREBY STIPULATED AND AGREED
by and between the attorneys for the
respective parties herein that filing and
sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the form
of the question, shall be reserved to the
time of the trial.

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be signed
and sworn to before any officer authorized
to administer an oath with the same force
and effect as if signed and sworn to before
the Court.

09:46:56 1

09:46:58 2

MR. KAPLEN: I just want the record

09:47:10 3

to reflect before we start that I had informed

09:47:14 4

Defendant's counsel that Sabina Paradi passed

09:47:20 5

away on June 30th, 2007 and that we have agreed

09:47:24 6

that although formal substitution has not taken

09:47:26 7

place and legal proceedings of California have

09:47:30 8

not taken place as of yet to substitute the

09:47:32 9

estate of Miss Paradi as party Plaintiff in this

09:47:38 10

action, we have agreed nonetheless to go forward

09:47:42 11

with the deposition of Defendant today to be used

09:47:46 12

as if all of that has formally taken place.

09:47:58 13

MR. BUTLER: That's correct.

09:48:02 14

THE VIDEOGRAPHER: This is the video

09:48:04 15

operator speaking Sarah Engelman of Merrill Legal

09:48:10 16

Services, 25 West 45th Street, New York, New York

09:48:16 17

10037. Today is August 21, 2007 and the time is

09:48:20 18

9:47 a.m. We are at the offices of

09:48:22 19

DeCaro & Kaplen to take the videotape deposition

09:48:26 20

of Michael Phillips in the matter of Sabina

09:48:28 21

Paradi a judicially declared incapacitated person

09:48:34 22

by the guardians of her person and property, Bodo

09:48:38 23

Paradi and Mary Moore versus Michael R. Phillips

09:48:38 24

in the United States District Court Souther

25

District of New York. Will counsel introduce

09:48:40 1

09:48:40 2 themselves for the record.

09:48:44 3

MR. KAPLEN: Good morning, I'm

09:48:44 4

Michael Kaplen and I represent the Plaintiffs in

09:48:46 5

this case.

09:48:48 6

MR. BUTLER: James D. Butler on

09:48:50 7

behalf of the Defendant.

09:48:52 8

THE VIDEOGRAPHER: Will the court

09:48:58 9

reporter, Bill Visconti, of Merrill Legal

10

Services swear the witness.

11

12

M I C H A E L R. P H I L L I P S,

13

having been first duly sworn by the Notary Public

14

(William Visconti), was examined and testified as

15

follows:

09:49:04 16

EXAMINATION CONDUCTED BY MR. KAPLEN:

09:49:04 17

Q. Good morning.

09:49:06 18

A. Good morning.

09:49:10 19

Q. Again, my name is Michael Kaplen and

09:49:12 20

I represent the late Sabina Paradi and her family

09:49:16 21

in connection with this case. I'm going to be

09:49:20 22

asking you questions today concerning an incident

09:49:22 23

that happened on February 25th of 2007 and if you

09:49:24 24

don't understand my questions please tell me and

25

we will rephrase those questions for you. Okay?

09:49:26 1

MICHAEL R. PHILLIPS

09:49:28 2

A. Okay.

09:49:28 3

Q. You understand that this is being

09:49:30 4

videotaped?

09:49:30 5

A. Yes.

09:49:32 6

Q. You understand please that your

09:49:32 7

answers have to be oral?

09:49:36 8

A. Yes.

09:49:38 9

Q. So we get it all down both by our

09:49:38 10

stenographer and as well as the video?

09:49:40 11

A. Yes.

09:49:40 12

Q. Can you tell us please where you

09:49:42 13

currently reside?

09:49:44 14

A. 2 Robin Road, Rumson, New Jersey.

09:49:46 15

Q. Is that a private residence?

09:49:46 16

A. Yes.

09:49:50 17

Q. Who did you reside there with?

09:49:52 18

A. My wife Susan and my son John.

09:49:54 19

Q. What is Susan's full name?

09:49:56 20

A. Susan Raquel Phillips.

09:49:58 21

Q. How long have you resided there?

09:49:58 22

A. I have been there for almost 20

09:50:02 23

years.

09:50:04 24

Q. Is this a one-family house?

25

A. Yes.

09:50:04 1

MICHAEL R. PHILLIPS

09:50:06 2

Q. Does anybody else reside there

09:50:06 3

besides the three of you?

09:50:10 4

A. No.

09:50:10 5

Q. And your wife, does she own a

09:50:12 6

vehicle?

09:50:14 7

A. Yes.

8

Q. Did she own a vehicle in February of

09:50:16 9

2007?

09:50:16 10

A. Yes.

09:50:18 11

Q. What type of vehicle was that that

09:50:20 12

she owned?

09:50:24 13

A. She owns a Dodge Caravan.

09:50:26 14

Q. In addition to that Dodge Caravan and

09:50:28 15

the vehicle that you were driving on the date of

09:50:32 16

this incident, which we will get to in a moment,

09:50:32 17

does anybody in that household own any other

09:50:34 18

vehicles?

09:50:36 19

A. Besides myself, no.

09:50:36 20

Q. And your wife?

09:50:38 21

A. Yes.

09:50:38 22

Q. Your son owns a vehicle?

09:50:40 23

A. No.

09:50:40 24

Q. So there is only two vehicles in the

25

house?

09:50:42 1

MICHAEL R. PHILLIPS

09:50:44 2

A. Yes.

09:50:46 3

Q. On February 25th of 2007 what type of

09:50:50 4

vehicle were you driving?

09:50:52 5

A. My '88 Chevrolet pickup.

09:50:54 6

Q. What year vehicle was that?

09:50:56 7

A. 1988.

09:50:56 8

Q. Does that vehicle have power

09:50:56 9

steering?

09:50:58 10

A. Yes.

09:50:58 11

Q. Power brakes?

09:51:00 12

A. Yes.

09:51:00 13

Q. Antilock brakes?

09:51:02 14

A. Yes.

09:51:04 15

Q. Automatic or manual transmission?

09:51:08 16

A. Manual.

09:51:12 17

Q. As a result of the incident that

09:51:14 18

happened on February 25th of 2007 was there any

09:51:14 19

damage to your vehicle?

09:51:22 20

A. No.

09:51:22 21

Q. No damage whatsoever to any portion

09:51:22 22

of the vehicle?

09:51:26 23

A. No, sir.

09:51:28 24

Q. Did you take your vehicle anyplace

25

for an inspection of any kind?

09:51:28 1

MICHAEL R. PHILLIPS

09:51:30 2

A. No.

09:51:32 3

Q. Do you know if your vehicle was

09:51:36 4

photographed?

09:51:38 5

A. I don't know .

09:51:42 6

MR. KAPLEN: Mr. Butler, do you have

09:51:44 7

the color photographs of this incident of the

09:51:46 8

truck involved in this incident?

09:51:48 9

MR. BUTLER: The vehicle was

09:51:52 10

photographed. I sent you all that I have which

09:51:56 11

are photocopies. I have arranged and I

09:51:58 12

anticipate getting within the next day or two the

09:52:02 13

color photo and which you have been trying and I

09:52:04 14

finally succeeded but I have not seen it yet.

09:52:06 15

Q. Do you know if any videos were taken

09:52:06 16

of the vehicle subsequent to this accident?

09:52:08 17

A. I don't know.

09:52:08 18

MR. KAPLEN: Mr. Butler, were any

09:52:20 19

videos taken?

09:52:22 20

MR. BUTLER: Not to my knowledge.

09:52:22 21

Q. Now, on February 25th of 2007 can you

09:52:30 22

tell me by whom were you employed?

09:52:34 23

A. Niederlander Organization.

09:52:38 24

Q. What is your business or profession?

25

A. My profession is an assistant

09:52:40 1

MICHAEL R. PHILLIPS

09:52:44 2

carpenter. I'm a stagehand.

09:52:44 3

Q. How long were you employed by them?

09:52:46 4

A. I have been working in the business

09:52:48 5

for over 32 and a half years.

09:52:50 6

Q. At that time did you have any other

09:52:52 7

employment in addition to your employment with

09:52:52 8

Niederlander?

09:52:54 9

A. I don't understand.

09:52:56 10

Q. Were you employed anyplace else on

09:52:56 11

February 25th?

09:52:56 12

A. No.

09:53:00 13

Q. Did you have any other independent

09:53:00 14

work that you did in addition to working with

09:53:00 15

Niederlander?

09:53:02 16

A. No.

09:53:06 17

Q. Did you have any independent business

09:53:06 18

that you operated in addition to your employment

09:53:08 19

with Niederlander?

09:53:10 20

A. No.

09:53:16 21

Q. Approximately what time did this

09:53:18 22

incident happen with Sabina Paradi?

09:53:24 23

A. Approximately 9:20 p.m. Sunday night.

09:53:26 24

Q. Where were you coming from?

25

A. I was coming from work.

09:53:26 1

MICHAEL R. PHILLIPS

09:53:30 2

Q. Where was that?

09:53:32 3

A. The Mintzcoff Theater.

09:53:34 4

Q. Where was that located?

09:53:34 5

A. Between 44th and 45th street and

09:53:38 6

Broadway.

09:53:38 7

Q. What time did you get to work that

09:53:40 8

day?

9

A. I got to work that day at twelve

09:53:42 10

o'clock.

09:53:42 11

Q. What time did your employment end

09:53:44 12

that day?

09:53:52 13

A. 9:05.

09:53:54 14

Q. During the course of that day did you

09:53:54 15

have any alcoholic beverages to drink?

09:53:56 16

A. No.

09:53:58 17

Q. During the course of that day were

09:54:02 18

you under any type of medication?

09:54:04 19

A. I had Advil Sinus And Cold Medicine.

09:54:06 20

Q. And that was for a common cold?

09:54:08 21

A. Yes.

09:54:12 22

Q. When was the last time that you took

09:54:14 23

this medication prior to 9:05 p.m.

09:54:22 24

A. At lunchtime that day.

25

Q. After you left your place of

09:54:24 1

MICHAEL R. PHILLIPS

09:54:26 2

employment, what was your intended destination?

09:54:28 3

A. Going home.

09:54:28 4

Q. At the time of this incident was

09:54:28 5

there anybody in your vehicle?

09:54:32 6

A. No.

09:54:34 7

Q. From the time that you got in your

09:54:36 8

vehicle intending to go home, did you have

09:54:38 9

anybody in your vehicle that you dropped off

09:54:38 10

prior to this incident?

09:54:42 11

A. No.

09:54:48 12

Q. Prior to reaching the location of

09:54:50 13

this accident which I understand to be Ninth

09:54:52 14

Avenue and West 37th Street in Manhattan, did you

09:54:52 15

make any stops?

09:54:58 16

A. No.

09:54:58 17

Q. Did you have anything to eat during

09:54:58 18

the course of that day?

09:55:00 19

A. Yes.

09:55:02 20

Q. How many meals did you eat?

09:55:02 21

A. Two meals.

09:55:04 22

Q. What meals were those?

09:55:08 23

A. I don't remember. I don't know.

09:55:12 24

Q. While you were in your vehicle

25

proceeding to this location, were you eating

09:55:12 1

MICHAEL R. PHILLIPS

09:55:12 2

anything at the time?

09:55:14 3

A. No.

09:55:16 4

Q. Were you drinking at the time

09:55:16 5

anything?

09:55:18 6

A. No.

09:55:18 7

Q. Any coffee or soda or water?

09:55:22 8

A. No.

09:55:22 9

Q. Do you own a cell phone?

09:55:24 10

A. Yes.

09:55:24 11

Q. Did you own a cell phone on

09:55:24 12

February 25th?

09:55:26 13

A. Yes.

09:55:26 14

Q. Is it the same cell phone that you

09:55:26 15

own today?

09:55:28 16

A. No.

09:55:30 17

Q. The same phone number?

09:55:32 18

A. The same phone number, yes.

09:55:36 19

Q. What is that phone number?

09:55:38 20

A. 908-227-8932.

09:55:38 21

Q. What carrier is that?

09:55:46 22

A. Verizon.

09:55:50 23

Q. From the time that I got into the

09:55:52 24

vehicle at approximately 9:05 until the time of

25

that incident, did you use that cell phone for

09:55:52 1

MICHAEL R. PHILLIPS

09:55:54 2

any reason?

09:56:04 3

A. No.

09:56:04 4

Q. Did you use the cell phone after the

09:56:06 5

incident?

09:56:06 6

A. Yes.

09:56:08 7

Q. Who did you call afterwards?

09:56:08 8

A. I called my wife.

09:56:10 9

Q. Did you call anybody else?

09:56:12 10

A. And I called the person that I was

09:56:16 11

supposed to work for the following morning.

09:56:16 12

Q. Where were you supposed to work the

09:56:20 13

following morning?

09:56:22 14

A. At the Imperial Theater.

09:56:24 15

Q. You work for Niederlander but your

09:56:26 16

place of employment would change from theater to

09:56:26 17

theater on any given date?

09:56:28 18

A. Yes.

09:56:30 19

Q. Was your truck equipped with a radio?

09:56:34 20

A. No.

21

Q. Was it equipped with a CB radio of

09:56:36 22

any kind?

09:56:42 23

A. No.

09:56:44 24

Q. Now, you were traveling prior to this

25

incident on West 37th Street?

MICHAEL R. PHILLIPS

09:56:46 1

09:56:46 2

A. Yes.

09:56:48 3

Q. And you were going westbound?

09:56:50 4

A. Yes.

09:56:54 5

Q. As you approached the intersection of

09:57:00 6

Ninth Avenue what were the weather conditions?

09:57:06 7

A. Snowing, nasty, dark, icy, wet.

09:57:08 8

Q. Had there been any accumulation of

09:57:18 9

snow on the roadway?

09:57:24 10

A. Slush, ice, wet roadways.

09:57:30 11

Q. How long had it been snowing?

09:57:30 12

A. The whole day, pretty much. I guess

09:57:32 13

the whole day.

09:57:36 14

Q. While you were driving and you were

09:57:40 15

approaching this intersection of Ninth Avenue and

09:57:42 16

West 37th Street, can you describe the snow

09:57:42 17

conditions for me as being light, medium or heavy

09:57:46 18

or something else?

09:57:48 19

A. Heavy.

09:57:48 20

Q. Did you have windshield wipers in

09:57:48 21

your truck?

09:57:50 22

A. Yes.

09:57:50 23

Q. Were they operational?

09:57:52 24

A. Yes.

25

Q. Were you using them at the time?

09:57:52 1

MICHAEL R. PHILLIPS

09:57:54 2

A. Yes.

09:57:56 3

Q. Did your truck have lights, yes?

09:57:56 4

A. Yes.

09:57:56 5

Q. Were these lights on?

09:58:00 6

A. Yes.

09:58:02 7

Q. As you approached West 37th Street

09:58:06 8

and the intersection of Ninth Avenue, how many

09:58:10 9

lanes of travel are there on West 37th Street?

09:58:14 10

A. Two.

09:58:14 11

Q. Is that in addition to lanes for

09:58:18 12

parked vehicles?

09:58:18 13

A. That is in addition to lanes for

09:58:22 14

parked vehicles.

09:58:24 15

Q. Would there be lanes for parked

09:58:26 16

vehicles on West 37th Street both on the left and

09:58:26 17

right side?

09:58:28 18

A. Yes.

09:58:30 19

Q. As you were approaching this

09:58:34 20

intersection of Ninth Avenue while traveling on

09:58:36 21

West 37th Street were there any cars parked in

09:58:36 22

either the right or left lane?

09:58:38 23

A. Yes.

09:58:40 24

Q. Both or one?

25

A. Both. There were cars on the left

09:58:40 1

MICHAEL R. PHILLIPS

09:58:48 2

and the right.

09:58:48 3

Q. Were both moving lanes, the two lanes

09:58:52 4

that you described open for the flow of traffic?

09:58:52 5

A. Yes.

09:58:54 6

Q. Were you familiar with this

09:58:54 7

intersection?

09:58:56 8

A. Yes.

09:58:58 9

Q. Is this an intersection that you

09:59:00 10

would pass on a regular basis?

09:59:02 11

A. Yes.

09:59:02 12

Q. What was your intended route when you

09:59:06 13

reached this intersection?

09:59:10 14

A. Approaching the Lincoln Tunnel.

09:59:12 15

Q. And that would be an approach from

09:59:12 16

Ninth Avenue?

09:59:14 17

A. Yes.

09:59:18 18

Q. And that would be an approach from

09:59:20 19

Ninth Avenue. If you got onto Ninth Avenue and

09:59:24 20

you were going to go to the Lincoln Tunnel, where

09:59:26 21

would you then get on to the Lincoln Tunnel?

09:59:28 22

A. The two extreme right lanes.

09:59:30 23

Q. How far would you travel on Ninth

09:59:34 24

Avenue before the entrance to the Lincoln Tunnel?

25

A. Right on Ninth Avenue right from the

09:59:38 1

MICHAEL R. PHILLIPS

09:59:52 2

middle before 37th Street and 36th Street.

09:59:54 3

Q. Following this incident, did the New

09:59:54 4

York City Police arrive?

09:59:56 5

A. Yes.

09:59:58 6

Q. Did you speak to the New York City

09:59:58 7

Police?

10:00:00 8

A. Yes.

10:00:00 9

Q. Did you give them a written

10:00:04 10

statement?

10:00:04 11

A. New York City Police, no.

10:00:06 12

Q. Did you sign a statement for the New

10:00:12 13

York City Police?

10:00:16 14

A. No, I don't recall. It was very

15

confusing. I don't recall, maybe, I may have

10:00:16 16

not.

10:00:20 17

Q. Do you recall speaking to them?

10:00:20 18

A. Sorry, yes, I recall speaking to

10:00:22 19

them.

10:00:22 20

Q. Did they ask you questions concerning

10:00:22 21

this incident?

10:00:24 22

A. Yes.

10:00:26 23

Q. Did you answer those questions

10:00:26 24

truthfully and honestly?

25

A. To the best of my knowledge.

10:00:30 1

MICHAEL R. PHILLIPS

10:00:32 2

Q. And you understood that questions

10:00:36 3

that the New York Police Department were asking

10:00:36 4

you were in connection with their investigation

10:00:38 5

of this incident?

10:00:38 6

A. At times.

10:00:40 7

Q. I'm sorry?

10:00:42 8

A. At times I understood.

10:00:44 9

Q. What do you mean by at times?

10:00:44 10

A. Because I had to ask them a couple of

10:00:46 11

times to repeat the question.

10:00:48 12

Q. You understood why they were asking

10:00:48 13

you questions?

10:00:50 14

A. Yes.

10:00:50 15

Q. It was in connection with this

10:00:52 16

incident and the investigation that they were

10:00:52 17

conducting?

10:00:54 18

A. Yes.

10:00:56 19

Q. And you were not under the influence

10:00:56 20

of any drugs or medication?

10:00:58 21

A. No.

22

Q. That impaired your thinking in any

10:01:02 23

way?

24

A. No.

25

(Plaintiff's Exhibit 7

MICHAEL R. PHILLIPS

1

10:01:04 2 for identification, Statement.)

10:01:10 3 Q. I show you a document marked as
10:01:10 4 Plaintiffs Exhibit 7 and ask you if you have ever
10:01:20 5 seen this document before today?

10:01:42 6 MR. KAPLEN: Mr. Butler, I have a
10:01:44 7 copy for you.

10:01:44 8 (Witness reviewing document.)

10:01:46 9 Q. My question to you, have you ever
10:01:46 10 seen that document before today?

10:01:48 11 A. Yes, I have.

10:01:50 12 Q. When was the last time prior to
10:01:52 13 entering into the room that you saw this
10:01:52 14 document?

10:01:54 15 A. I don't recall.

10:01:54 16 Q. Did your lawyer ever show you this
10:01:56 17 document?

10:01:58 18 A. No.

10:02:02 19 Q. Did anybody on behalf of your lawyer
10:02:02 20 and anybody else representing you in this matter
10:02:04 21 ever show you this document?

10:02:06 22 A. No.

10:02:06 23 Q. Anybody ever read to you the contents
10:02:12 24 of this document?

25 A. After I had told the policeman what

10:02:14 1

MICHAEL R. PHILLIPS

10:02:18 2

happened, he reread it to me and that was it.

10:02:20 3

Q. This document was dictated by you to

10:02:22 4

the police officer?

10:02:24 5

A. It was dictated to me by the police

10:02:26 6

officer after I had told him.

7

Q. You told him what happened, he wrote

10:02:26 8

it down?

10:02:28 9

A. Yes.

10:02:30 10

Q. And then he read it back?

10:02:34 11

A. Yes, he read it back to me.

10:02:34 12

Q. After he read it back to you, did you

10:02:36 13

then sign this document?

10:02:38 14

A. Yes.

10:02:38 15

Q. Is the signature on the bottom your

10:02:40 16

signature?

10:02:52 17

A. Yes.

10:02:56 18

Q. Is this statement by you a truthful

10:03:02 19

recitation of the events that took place on

10:03:04 20

February 25th, 2007 in connection with the

10:03:08 21

incident involving Miss Paradi?

10:03:10 22

A. At the time of the incident it is as

10:03:12 23

accurate as it could be.

10:03:14 24

Q. Have things changed since then to

25

render this document inaccurate in any way?

10:03:18 1

MICHAEL R. PHILLIPS

10:03:20 2

A. Yes.

10:03:26 3

Q. What has changed?

10:03:30 4

A. Just how things had happened and

10:03:32 5

being confused, I was confused and very extremely

10:03:34 6

upset that night.

10:03:36 7

Q. What things have changed since this

10:03:44 8

incident concerning what happened?

10:03:44 9

A. Just mentally my mind has changed. I

10:03:48 10

don't know. I don't know, but I don't know.

10:03:48 11

Q. You were being truthful and honest

10:03:50 12

then, weren't you?

10:03:50 13

A. Yes, sir.

10:03:54 14

Q. And you were attempting at that point

10:03:54 15

to give a full and complete recitation of what

10:03:56 16

happened, right?

10:03:58 17

A. Yes.

10:04:00 18

Q. When you gave this statement to the

10:04:02 19

New York City Police you didn't discuss this

10:04:02 20

incident with anybody first, right?

10:04:12 21

A. No, sir.

10:04:14 22

Q. Tell me at the present time what do

10:04:22 23

you believe to be inaccurate about this

10:04:30 24

statement? Before you answer that question, I

25

will ask you please to do this for me. Can you

10:04:34 1

MICHAEL R. PHILLIPS

10:04:36 2

read the statement that was read to you by the

10:04:36 3

New York City Police Department before you signed

10:04:38 4

this document?

10:04:40 5

A. It was dark.

10:04:42 6

Q. Can you read it now?

10:04:44 7

A. Can I read it now?

10:04:44 8

Q. Can you read it into the record for

10:04:44 9

us?

10:04:48 10

A. Yes.

10:04:50 11

Q. And what you're going to read now is

10:04:50 12

what was read to you by the police department

10:04:52 13

before you signed this document?

10:04:52 14

A. Yes.

10:04:58 15

Q. Read that, please?

10:05:00 16

A. "I was Westbound on 37th Street in

10:05:04 17

the right lane, two cars were to my left. I was

10:05:08 18

going to make a left turn on Ninth Avenue. The

10:05:14 19

two cars to my left went straight on Ninth

10:05:18 20

Avenue. At Ninth Avenue. We had the green light

10:05:32 21

as the two cars cleared I began to make my turn

10:05:32 22

and I didn't even see them. I heard the bang and

10:05:32 23

stopped."

10:05:32 24

Q. Then a place for your signature?

25

A. Yes.

10:05:34 1

MICHAEL R. PHILLIPS

10:05:34 2

Q. And you signed it at that location?

10:05:36 3

A. Yes.

10:05:38 4

Q. And that was signed by you after it

10:05:44 5

was read to you by the police officer?

10:05:48 6

A. Yes.

10:05:48 7

Q. What about that statement do you now

10:05:52 8

contend is inaccurate?

10:05:54 9

A. That the second car that was making --

10:06:00 10

that was going straight had its left blinker on

10:06:00 11

and I had stated it also and it was not put in

10:06:02 12

the report.

10:06:06 13

Q. Say this again for me?

10:06:10 14

A. The second car that was to my left

10:06:12 15

that went straight had its left blinker on and it

10:06:14 16

was not put into the report.

10:06:14 17

Q. Anything else inaccurate about this

10:06:16 18

report?

10:06:18 19

A. Not to my knowledge right there, no.

10:06:18 20

MR. BUTLER: The statement part of

10:06:22 21

the report?

10:06:22 22

MR. KAPLEN: Just what he read into

10:06:22 23

the record.

10:06:30 24

MR. BUTLER: Yes.

25

Q. Now, there is then a series of

10:06:36 1

MICHAEL R. PHILLIPS

10:06:40 2

questions and written answers in some boxes under

10:06:40 3

what you just read. Okay, do you see that on

10:06:44 4

this statement?

10:06:44 5

A. Yes.

10:06:48 6

Q. Were those the answers that you gave

10:07:04 7

to the police department at the scene?

10:07:06 8

A. Yes.

10:07:08 9

Q. Were those answers read to you before

10:07:08 10

you signed the bottom of this statement?

10:07:08 11

A. Yes.

10:07:10 12

Q. Are those answers accurate?

10:07:12 13

A. Yes.

10:07:14 14

Q. Anything inaccurate about those

10:07:14 15

answers?

10:07:32 16

A. Not to my knowledge.

10:07:34 17

Q. Since this incident, have you given a

10:07:36 18

written statement to anybody else?

10:07:36 19

A. Yes.

10:07:38 20

Q. Who was that?

10:07:42 21

A. My insurance company.

10:07:42 22

Q. Anybody else in addition to that

10:07:50 23

insurance company?

10:07:52 24

A. Not to my knowledge.

25

Q. Did you give one written statement --

10:07:56 1

MICHAEL R. PHILLIPS

10:07:58 2

A. Sorry, except for the highway patrol

10:08:00 3

policeman.

10:08:04 4

Q. That is what we just read?

5

A. This was highway patrol or the New

10:08:06 6

York City Police.

10:08:08 7

Q. Did you give more than one statement?

10:08:10 8

A. New York City Police, there is an

10:08:12 9

accident report.

10:08:14 10

MR. BUTLER: The question is did you

10:08:18 11

give a written report.

10:08:20 12

Q. In addition -- let's stop. At the

10:08:22 13

scene, in addition to signing this statement, did

10:08:24 14

you sign any other statement?

10:08:28 15

A. Yes.

10:08:28 16

Q. Was that one statement or more than

10:08:32 17

one statement?

10:08:36 18

A. I don't remember.

10:08:40 19

Q. The additional statement that you

10:08:42 20

signed at the scene, did that have any different

10:08:42 21

information other than what you just read into

10:08:52 22

the record?

10:08:54 23

A. The additional information that I

10:08:58 24

signed was for my insurance provider at home.

25

Q. So you gave additional information in

10:08:58 1

MICHAEL R. PHILLIPS

10:09:00 2

the statement that you gave at home to someone

10:09:00 3

else?

10:09:00 4

A. Yes.

10:09:04 5

Q. And this statement that you gave to

10:09:06 6

your insurance agent, was this a written

10:09:08 7

statement that you wrote or that somebody else

10:09:08 8

wrote and you signed?

10:09:10 9

A. Someone else wrote and I signed.

10:09:12 10

Q. How many pages was that statement?

10:09:14 11

A. I don't recall.

10:09:16 12

Q. Do you know who took that statement

10:09:16 13

from you?

10:09:18 14

A. Not offhand, no.

10:09:18 15

Q. Do you know what the purpose of that

10:09:20 16

statement was?

10:09:24 17

A. Investigation.

10:09:26 18

Q. When was that statement given?

10:09:28 19

A. I don't recall.

10:09:30 20

MR. KAPLEN: I would ask,

10:09:32 21

Mr. Butler, for a copy of that statement.

10:09:36 22

MR. BUTLER: I believe that that

10:09:36 23

statement falls within both work product and the

10:09:42 24

attorney-client privilege.

25

Q. In addition to that statement and the

10:09:44 1

MICHAEL R. PHILLIPS

10:09:46 2

statements that you gave at the scene to the

10:09:48 3

police department, have you ever given any

10:09:48 4

written statements to anybody else?

10:09:52 5

A. No.

10:09:52 6

Q. Have you ever given any taped

10:09:52 7

statements to anybody else?

10:09:58 8

A. No.

10:10:02 9

Q. Have you ever revisited this location

10:10:04 10

for the purposes of looking and taking a walk

10:10:04 11

around or anything else in connection with this

10:10:06 12

incident?

10:10:10 13

A. No.

10:10:12 14

Q. Has anybody ever shown you

10:10:14 15

photographers of this location?

16

A. Of this location?

17

Q. Yes.

10:10:14 18

A. Yes.

10:10:16 19

Q. Who was that?

10:10:22 20

A. My insurance provider who took the

10:10:22 21

statement. Just the pictures themselves of the

10:10:24 22

location.

10:10:26 23

Q. Did he ask you to mark those pictures

10:10:26 24

in any way to show him different things?

25

A. No.

10:10:30 1

MICHAEL R. PHILLIPS

10:10:32 2

Q. In addition to that individual from

10:10:36 3

the insurance company showing you any

10:10:36 4

photographs, has anybody else shown you any

10:10:36 5

photographs?

10:10:40 6

A. No.

10:10:42 7

Q. Have you ever seen photographs taken

10:10:42 8

by the New York City Police Department?

10:10:44 9

A. No.

10:10:48 10

Q. Have you ever seen any photographs

10:10:50 11

that were provided to your attorney by my office

10:10:52 12

concerning this location?

10:11:14 13

A. No.

10:11:14 14

Q. At the scene of this incident, did

10:11:14 15

you speak to any witnesses?

10:11:18 16

A. No.

10:11:18 17

Q. Do you know if there are any

10:11:18 18

witnesses?

10:11:22 19

A. Not to my knowledge.

10:11:24 20

Q. In addition to speaking to police

10:11:24 21

officers at the scene, did you speak to anybody

10:11:24 22

else?

10:11:46 23

A. No.

10:11:48 24

Q. Now, did your truck strike Sabina

25

Paradi?

10:11:48 1

MICHAEL R. PHILLIPS

10:11:52 2

A. I don't know.

10:11:54 3

Q. Did you hear any sound indicating

10:11:56 4

that your vehicle made contact with an

10:11:58 5

individual?

10:12:02 6

A. I heard a loud bang.

10:12:02 7

Q. Was that bang on the right side of

10:12:02 8

your truck or left side?

10:12:04 9

A. Left side.

10:12:06 10

Q. Where on the left side was that bang?

10:12:12 11

A. Left front fender.

10:12:16 12

Q. Before you heard that bang did you

10:12:18 13

see any pedestrians crossing the intersection of

10:12:18 14

Ninth Avenue and West 37th Street?

10:12:22 15

A. No.

10:12:24 16

Q. Did you see any pedestrians standing

10:12:24 17

on any of the corners waiting to cross?

10:12:26 18

A. No.

10:12:30 19

Q. Was your visibility of the

10:12:34 20

intersection of West 37th Street and Ninth Avenue

10:12:38 21

obstructed in any way as you were making your

10:12:38 22

turn -- were you making a turn from West 37th

10:12:38 23

Street on to Ninth Avenue?

10:12:40 24

A. Yes.

25

Q. And that would be a left turn?

10:12:40 1

MICHAEL R. PHILLIPS

10:12:42 2

A. Yes.

10:12:46 3

Q. Was your visibility obstructed in any

10:12:48 4

way while you were making that turn from West

10:12:48 5

37th Street on to Ninth Avenue?

10:13:02 6

A. Just the weather conditions.

10:13:04 7

Q. Were you able to see clearly through

10:13:04 8

your front windshield with the windshield wipers

10:13:04 9

operating?

10:13:04 10

A. Yes.

10:13:04 11

Q. Your visibility of the curbs weren't

10:13:04 12

obstructed in any way?

10:13:06 13

A. Besides the slush and ice.

10:13:06 14

Q. Was it just the slush and ice?

10:13:10 15

A. Yes.

10:13:14 16

Q. Was your visibility of the crosswalk

10:13:16 17

itself where people would be walking obstructed

10:13:18 18

in any way? And I don't mean any slush or snow

10:13:20 19

on the ground. You could see clearly?

10:13:30 20

A. I don't recall. I don't remember.

10:13:34 21

Q. At the time that you heard this

10:13:36 22

impact with the left front fender of your

10:13:38 23

vehicle, what speed were you traveling at?

10:13:42 24

A. Approximately three miles an hour.

25

Q. Had you completed your turn yet?

10:13:42 1

MICHAEL R. PHILLIPS

10:13:46 2

A. No.

10:13:46 3

Q. Where on the roadway was your

10:13:50 4

vehicle?

5

A. I don't remember. I don't know. I

10:13:54 6

don't know.

10:13:56 7

Q. Was it on anyway -- let's do this

10:14:00 8

first. I'm going to show you some photographs

10:14:04 9

that we have marked Plaintiff's Exhibit s 1

10:14:08 10

through 6. I ask you to look at these

10:14:10 11

photographs first and then I will ask you some

12

questions about them. Okay?

10:14:10 13

(Plaintiff's Exhibit 1-6

10:14:16 14

for identification, Photographs.).

10:14:26 15

(Witness reviewing document.)

10:14:26 16

MR. KAPLEN: Do you want to look at

10:14:28 17

them, Mr. Butler?

10:14:36 18

MR. BUTLER: Please.

10:14:38 19

MR. KAPLEN: Those are enlargements

10:14:38 20

of the photographs that I previously provided to

10:14:56 21

you.

10:14:58 22

Q. Could you just flip through those

10:15:38 23

pictures, and I'm going to be asking you

10:15:42 24

questions about these photographs. I don't want

25

you to think I'm crazy, but we have to do this in

MICHAEL R. PHILLIPS

a certain way under our legal proceedings. I show you what is marked as Plaintiff's Exhibit 1 for identification and ask you if you recognize this, what is depicted on that photo?

A. Yes.

Q. Can you tell us, please?

A. West 37th Street and Ninth Avenue.

Q. Is that a fair and accurate depiction of this location as it existed at the time of this incident on February 25th?

A. No.

Q. In what way is it different?

A. The weather, it was snowing, roads were not clear and it was dark.

Q. Other than that, is the geographic depiction accurate?

A. Yes, geographically, yes.

Q. Can you tell us Plaintiff's Exhibit 2 except for the weather conditions and the fact that this was taken in the daytime rather than evening is also a fair and accurate depiction of this location of Ninth Avenue and West 37th Street as it existed on February 25th of 2007?

A. Yes, whatever the road conditions

10:16:56 1

MICHAEL R. PHILLIPS

10:16:58 2

there are, I don't know.

10:17:00 3

Q. Understanding that all of those

10:17:04 4

pictures that I'm going to show you were taken in

10:17:06 5

daylight and understanding that it was snowing

10:17:10 6

that night, I will ask you to look at each one of

10:17:14 7

these to tell me if each one of these is a fair

10:17:18 8

and accurate depiction of this intersection as it

10:17:20 9

appeared on February 25th. Exhibit 3, fair and

10:17:24 10

accurate depiction?

10:17:26 11

A. Yes.

10:17:30 12

Q. Exhibit 4?

10:17:32 13

A. Yes.

10:17:42 14

Q. Exhibit 5?

10:17:42 15

A. Yes.

10:17:50 16

Q. Exhibit 6?

10:17:56 17

A. Yes.

10:18:00 18

Q. Now, looking at Exhibit No. 6, we are

10:18:02 19

looking at a view of Ninth Avenue going

10:18:02 20

southbound?

10:18:06 21

A. Yes.

10:18:06 22

Q. And that would be the street that you

10:18:08 23

would be turning on to?

10:18:16 24

A. Yes, sir.

25

Q. Looking at this photo, Exhibit 6, can

10:18:22 1

MICHAEL R. PHILLIPS

10:18:26 2

you tell us, please, or point to me, please,

10:18:36 3

where your vehicle was when you heard this

10:18:42 4

sound? And if you could put a X at that spot.

5

A. I don't know. I don't know. I don't

10:18:52 6

know.

10:18:52 7

Q. You were in the process of making the

10:18:54 8

turn?

10:18:56 9

A. Yes.

10:19:04 10

Q. And Ninth Avenue at this location has

10:19:06 11

five lanes for moving traffic, okay. Two of

10:19:10 12

those being on the right and those would be the

10:19:12 13

lanes for turning into the Lincoln Tunnel?

10:19:14 14

A. Yes.

10:19:18 15

Q. Was it your intent to get into one of

10:19:18 16

these two right lanes as you were making your

10:19:24 17

turn?

10:19:28 18

A. Yes.

10:19:32 19

Q. When you made your left turn on to

10:19:34 20

Ninth Avenue, did you get on to Ninth Avenue in

10:19:36 21

any location other than these two right lanes?

10:19:38 22

A. I don't know.

10:19:40 23

Q. I'm asking you --

10:19:44 24

A. I don't know. I don't know. When I

25

turned left I started approaching left and I

10:19:46 1

MICHAEL R. PHILLIPS

10:19:48 2

heard the bang. I don't know what position my

10:19:52 3

truck was in, whether it was in the two right

10:19:52 4

lanes approaching the Lincoln Tunnel or in the

10:19:54 5

middle approach, I don't know.

10:19:58 6

Q. You could have been in the third lane

10:19:58 7

or fourth lane or any lane for that matter, you

10:20:00 8

just don't know?

10:20:14 9

A. I don't know.

10:20:16 10

Q. As you were making that turn, did you

10:20:24 11

observe any pedestrians standing in the location

10:20:26 12

where the H&R Block office is located?

10:20:26 13

A. I don't know. I did not see anyone

10:20:30 14

there.

10:20:32 15

Q. And -- I'm going to show you --

16

A. If there was anyone there, I don't

10:20:34 17

know.

10:20:40 18

Q. I show you Exhibit 3, and would that

10:20:42 19

be the view as you were making your left turn?

10:20:46 20

A. Yes.

10:20:46 21

Q. And again you see the H&R Block

10:20:48 22

location?

10:20:50 23

A. Yes.

10:20:54 24

Q. And that would be on the side of the

25

street where the two right turning lanes would be

10:20:54 1

MICHAEL R. PHILLIPS

10:20:56 2

for the tunnel?

10:20:58 3

A. Yes.

10:21:00 4

Q. And as you were making your turn, do

10:21:00 5

you know if any pedestrians were standing on that

10:21:02 6

corner?

10:21:04 7

A. I don't know.

10:21:10 8

Q. Before you started making your turn,

10:21:12 9

did you see any pedestrians crossing Ninth Avenue

10:21:12 10

either westbound or eastbound?

10:21:14 11

A. No.

10:21:14 12

Q. No, you didn't or no, you don't

10:21:16 13

recall?

10:21:26 14

A. No, I did not see anyone crossing.

10:21:30 15

Q. Plaintiff's Exhibit 4, is that

10:21:34 16

another view of West 37th Street in the direction

10:21:36 17

that you were traveling as you were approaching

10:21:38 18

this intersection of Ninth Avenue?

10:21:48 19

A. Yes, it is.

10:21:52 20

Q. Is Plaintiff's Exhibit 1 another view

10:21:54 21

of the direction that you were traveling on West

10:21:56 22

37th Street as you were approaching Ninth Avenue?

10:22:00 23

A. Yes.

10:22:04 24

Q. And Exhibit 2 would be the view of

25

someone who was standing by the H&R Block

10:22:08 1

MICHAEL R. PHILLIPS

10:22:18 2

location looking on down West 37th Street?

10:22:20 3

A. Yes.

10:22:24 4

Q. The sound that you heard, I'm sorry,

10:22:24 5

was that a loud sound, light sound, what kind of

10:22:24 6

sound?

10:22:28 7

A. Loud.

10:22:28 8

Q. Can you mimic that kind of sound for

10:22:28 9

us?

10:22:30 10

A. No.

10:22:32 11

Q. Did you understand what that sound

10:22:36 12

was after you heard it?

10:22:42 13

A. That either someone hit my truck with

10:22:44 14

a car or someone's hands laid on my car, my truck

10:22:46 15

fender.

10:22:48 16

Q. Just prior to hearing that sound, did

10:22:50 17

you see anyone crossing in front of your truck

10:22:52 18

either from the right or from the left?

10:23:26 19

A. No.

10:23:28 20

Q. After you heard that sound, what did

10:23:30 21

you do in regard to the operation of your truck?

10:23:32 22

A. I stopped it immediately. Put the

10:23:34 23

emergency brake on and got out of my truck to see

10:23:36 24

what the noise was from.

25

Q. And what did you see?

10:23:42 1

MICHAEL R. PHILLIPS

10:23:44 2

A. I saw a young woman laying down on

10:23:46 3

Ninth Avenue.

10:23:48 4

Q. Where was she in relationship to this

10:23:48 5

crosswalk?

10:23:50 6

A. I don't know.

10:23:50 7

Q. Was she in the crosswalk?

10:23:52 8

A. I don't know.

10:23:54 9

Q. Why don't you know?

10:23:58 10

A. Because of the street conditions, the

11

road conditions, I don't know. Slush. I don't

10:24:00 12

know.

10:24:02 13

Q. Did this happen in the middle of the

10:24:04 14

street somewhere or near somewhere in the

10:24:06 15

vicinity of the crosswalk?

16

A. It could have been in the vicinity.

10:24:12 17

I don't know.

10:24:14 18

Q. How far in your turn were you when

10:24:22 19

you heard this sound?

10:24:24 20

A. Maybe three quarters of the way in.

10:24:28 21

Maybe.

10:24:30 22

Q. Was anybody by this young woman that

10:24:30 23

you saw on the ground?

10:24:30 24

A. Yes.

25

Q. Who was that?

10:24:32 1

MICHAEL R. PHILLIPS

10:24:34 2

A. A young man.

10:24:34 3

Q. And did you ever speak to that young

10:24:36 4

man?

10:24:40 5

A. No.

10:24:40 6

Q. Did you have any words to say with

10:24:44 7

him at all?

10:24:44 8

A. No, my reaction was oh, my God, what

10:24:48 9

happened here. That was it.

10:24:50 10

Q. This young lady on the ground, what

10:24:58 11

did you observe about her conditions?

10:25:00 12

A. I didn't. She was lying there and

10:25:02 13

there were a lot of people and I didn't. I was

10:25:04 14

asked to step away.

10:25:04 15

Q. There were a lot people as soon as

10:25:10 16

you got out of your truck?

10:25:14 17

A. The police van showed up, with plain

10:25:14 18

clothes police, New York City Police right there

10:25:16 19

on the spot.

10:25:16 20

Q. Before or after you got out of your

10:25:18 21

truck?

10:25:18 22

A. After.

10:25:22 23

Q. I'm asking when you got out of your

10:25:24 24

truck and you walked around and saw this girl on

25

the ground, in addition to the young man that was

10:25:30 1

MICHAEL R. PHILLIPS

10:25:30 2

with her, was there anybody else there at that moment?

10:25:30 3

10:25:36 4

A. I don't know.

10:25:36 5

Q. How soon did the police van show up?

10:25:40 6

A. Within seconds.

10:25:42 7

Q. Do you know who called the police van

10:25:44 8

or if anybody called them?

10:25:46 9

A. I don't believe anybody did. I think

10:25:48 10

it was coincidence that they were there.

10:25:48 11

Q. Did you observe this girl on the

10:25:48 12

ground moving in any way?

10:25:52 13

A. I did not.

10:25:52 14

Q. Did you hear any sounds?

10:25:56 15

A. No.

10:25:58 16

Q. After you observed this girl on the

10:26:02 17

ground, what if anything did you do next?

10:26:04 18

A. I was asked to step to the sidewalk

10:26:06 19

away from the incident.

10:26:06 20

Q. Who asked you to do that?

10:26:08 21

A. The New York City Police.

10:26:08 22

Q. Did you do that?

10:26:10 23

A. Yes.

10:26:10 24

Q. Did you ever return to observe this

25

girl?

10:26:10 1

MICHAEL R. PHILLIPS

10:26:14 2

A. No.

10:26:16 3

Q. Did you ever speak to her or the

10:26:16 4

young man that she was with?

10:27:00 5

A. No.

10:27:02 6

Q. Did you observe whether this girl

10:27:06 7

that you saw on the ground had any bags or

8

packages, umbrellas, anything else with her at

10:27:08 9

that time?

10:27:10 10

A. I don't know. I did not.

10:27:10 11

Q. Do you know if the young man that she

10:27:14 12

was with did?

10:27:20 13

A. All I know is that he had very dark

10:27:24 14

clothes on, what I had seen of him when he stood

10:27:26 15

up overlooking his friend and I seen an umbrella

10:27:28 16

behind him in the middle of Ninth Avenue.

10:27:30 17

Q. Did you observe the kind of clothes

10:27:32 18

that the girl was wearing?

10:27:34 19

A. She had light slacks on and I don't

10:27:40 20

know what she was wearing on top because they

10:28:04 21

were trying to keep her warm with other coats.

10:28:04 22

Q. Now, while you were traveling on West

10:28:08 23

37th Street approaching this intersection of

10:28:10 24

Ninth Avenue, did you observe a traffic light?

25

A. Yes.

10:28:12 1

MICHAEL R. PHILLIPS

10:28:14 2

Q. Is there a traffic light controlling
this intersection of Ninth Avenue and 37th

10:28:16 4

Street?

10:28:18 5

A. Yes.

10:28:24 6

10:28:24 7

Q. As you approached this intersection
in the direction that you were proceeding on West
37th Street, that would be westbound?

10:28:26 8

10:28:28 9

A. Yes.

10:28:28 10

10:28:28 11

Q. Did you observe the color of the
traffic signal?

10:28:30 12

A. Yes.

10:28:32 13

Q. What color was it?

10:28:36 14

A. Red.

10:28:38 15

10:28:40 16

10:28:40 17

Q. Did you stop your vehicle because of
this red signal before you proceeded to make your
turn?

10:28:44 18

A. Yes.

10:28:46 19

10:28:46 20

Q. When you stopped your vehicle, were
there any cars in front of you?

10:28:50 21

A. No.

10:28:54 22

10:28:54 23

Q. And you would be the first car then
at this intersection of West 37th Street and
Ninth Avenue?

10:29:02 24

25

A. In the right lane, yes.

10:29:04 1

MICHAEL R. PHILLIPS

10:29:04 2

Q. You were intending to make a left

10:29:04 3

turn from the right lane?

10:29:06 4

A. Yes.

10:29:10 5

Q. How long were you stopped there with

10:29:10 6

the light being red before it turned to green?

10:29:12 7

A. I don't know.

10:29:14 8

Q. When you were stopped in this

10:29:16 9

right-hand lane of West 37th Street at the

10:29:18 10

intersection of Ninth Avenue, were there any cars

10:29:20 11

in the lane immediately to your left?

10:29:22 12

A. Yes.

10:29:22 13

Q. And they were also stopped at this

10:29:22 14

light?

10:29:24 15

A. Yes.

10:29:26 16

Q. Were there any cars behind you in the

10:29:26 17

right lane?

10:29:32 18

A. I don't know.

10:29:36 19

Q. Now, if you were intending to make a

10:29:38 20

left turn on to Ninth Avenue, can you tell me why

10:29:42 21

you were in the right-hand lane as opposed to

10:29:44 22

being in the left-hand lane while you were

10:29:46 23

stopped at this intersection?

10:29:50 24

A. Yes. The two cars that were to my

25

left, one car, the first car proceeded across

10:29:54 1

MICHAEL R. PHILLIPS

10:29:58 2

Ninth Avenue, the second car had its left blinker

10:30:00 3

on proceeding to go in the Lincoln Tunnel, I

10:30:02 4

presume and I proceeded to follow him, but that

10:30:04 5

car decided to go straight.

10:30:08 6

Q. That is not the question I'm asking.

10:30:12 7

A. It's a common of traffic flow.

10:30:12 8

Q. You understand, sir, that to make a

10:30:14 9

left turn --

10:30:16 10

A. Yes.

10:30:20 11

Q. -- from a street within the City of

10:30:24 12

New York you should be in the left lane of the

10:30:26 13

flow of traffic, do you understand that?

10:30:26 14

MR. BUTLER: Note my objection as

10:30:28 15

far as that question.

10:30:36 16

Q. You can answer that question?

10:30:36 17

A. Yes.

10:30:38 18

Q. You understood that to be the law?

10:30:40 19

A. No.

10:30:42 20

MR. BUTLER: Note my objection to

10:30:42 21

any questions along those lines.

10:30:48 22

Q. Understanding that you were supposed

10:30:50 23

to be in the left-hand lane of West 37th Street

10:30:52 24

to make the left turn, why were you not in the

25

left lane but in the right lane?

10:30:54 1

MICHAEL R. PHILLIPS

10:30:56 2

MR. BUTLER: Note my objection to

10:31:00 3

the form of the question. You may answer it.

10:31:06 4

A. Because of the weather conditions.

10:31:08 5

Safer to drive a wide turn instead of a narrow

10:31:08 6

short turn to get across Ninth Avenue because of

10:31:10 7

the weather conditions.

10:31:14 8

Q. What about the weather conditions

10:31:14 9

made it safer the way that you intended to make

10:31:16 10

the turn?

10:31:20 11

A. So my truck would not slip around

10:31:24 12

instead of making a sharp left turn into and make

10:31:26 13

a quick turn into the Lincoln Tunnel. It's a

10:31:30 14

nice wide turn so the rear end of my truck

10:31:30 15

wouldn't slide out because of the road

10:31:32 16

conditions.

10:31:38 17

Q. While you were stopped at this

10:31:42 18

traffic light, did anybody cross in front of your

10:31:46 19

vehicle crossing West 37th Street either going

10:31:46 20

northbound or southbound?

10:31:52 21

A. I don't know. I don't recall.

10:31:54 22

Q. While you stopped at this traffic

10:32:00 23

light, did you observe any pedestrians crossing

10:32:04 24

West 37th Street on either the northbound --

25

crossing Ninth Avenue either on the northbound

10:32:08 1

MICHAEL R. PHILLIPS

10:32:08 2

side of West 37th Street or the southbound side
of West 37th Street?

10:32:10 3

10:32:18 4

A. I did not see any, no.

10:32:18 5

10:32:18 6

Q. Did you see any pedestrians walking
in that area that night?

10:32:30 7

A. I don't remember.

10:32:34 8

10:32:34 9

Q. After the light turned green the car
that was immediately to your left, what did that
vehicle do?

10:32:38 10

10:32:38 11

A. It went straight across Ninth Avenue.

10:32:42 12

Q. Did that vehicle turn?

10:32:42 13

A. The other vehicle did not turn.

10:32:44 14

Q. The first car?

10:32:46 15

A. Did not turn, it went straight.

10:32:48 16

10:32:48 17

Q. Did that first vehicle -- was this a
car or truck?

10:32:50 18

A. It was a car.

10:32:52 19

10:32:52 20

Q. Did that first vehicle have its
signal light on?

10:33:02 21

A. No.

10:33:06 22

10:33:08 23

10:33:08 24

Q. Did you start moving at the same time
as this first vehicle -- that this first vehicle
to your left after the light turned green?

25

A. No.

10:33:12 1

MICHAEL R. PHILLIPS

10:33:12 2

Q. Who moved first?

10:33:14 3

A. The car moved first.

10:33:16 4

Q. The car to your left?

10:33:20 5

A. Yes.

10:33:22 6

Q. And how far did that car get through

10:33:28 7

this intersection before you started to move?

10:33:30 8

A. Approximately four feet.

10:33:30 9

Q. And then you started to move?

10:33:32 10

A. Yes.

10:33:34 11

Q. And then there is a car behind that

10:33:34 12

car on your left?

10:33:36 13

A. Yes.

10:33:36 14

Q. Was that a car or truck?

10:33:38 15

A. It was a car.

10:33:40 16

Q. And did you see that car start to

10:33:40 17

move before you started to move?

10:33:42 18

A. Yes.

10:33:44 19

Q. And did that car have its signal on?

10:33:46 20

A. Yes.

10:33:46 21

Q. Was that its left signal on?

10:33:48 22

A. Yes.

10:33:48 23

Q. Did that car turn on to Ninth Avenue?

10:33:54 24

A. No.

25

Q. Did you wait until that car proceeded

10:33:56 1

MICHAEL R. PHILLIPS

10:33:56 2

past you before you began to make your turn?

10:33:58 3

A. Yes.

10:34:00 4

Q. And as that car was proceeding past

10:34:00 5

you, were you moving or stopped?

10:34:06 6

A. I was stopped.

10:34:08 7

Q. What was your intent at being stopped

10:34:10 8

at that moment?

10:34:10 9

A. Waiting for the cars to clear so

10:34:12 10

there would be no accidents.

10:34:16 11

Q. Waiting for both of these cars on

10:34:18 12

your left to proceed in front of you and then you

10:34:20 13

would make this left turn behind them?

10:34:24 14

A. Yes.

10:34:24 15

Q. And did they both proceed in front of

10:34:28 16

you?

10:34:32 17

A. Yes.

10:34:36 18

Q. Did they both clear the intersection

10:34:38 19

of Ninth Avenue and West 37th Street before you

10:34:38 20

began to make your left turn?

10:34:42 21

A. No.

10:34:42 22

Q. Did either one of these vehicles --

10:34:44 23

A. I don't recall.

10:34:50 24

Q. Where was this second vehicle in

25

relationship to this intersection when you began

10:34:50 1

MICHAEL R. PHILLIPS

10:34:56 2

to work your left turn?

10:35:04 3

A. I don't know. I don't know.

10:35:08 4

Q. If we look at the roadway of Ninth

10:35:12 5

Avenue and West 37th Street, Plaintiff's Exhibit

10:35:16 6

6, can you point to us where the second vehicle

10:35:16 7

would have been when you began to make your left

10:35:24 8

turn?

10:35:28 9

A. I don't know. I don't know.

10:35:28 10

Q. And that would be the same by looking

10:35:34 11

at any of the pictures?

12

A. Yes, it would be. Just, I don't

10:35:42 13

know.

10:35:46 14

Q. Looking at Plaintiff's Exhibit 1,

10:35:48 15

that would be West 37th Street in the direction

10:35:48 16

that you were traveling?

10:35:50 17

A. Yes.

10:35:50 18

Q. And that shows the two lanes of

10:35:52 19

traffic?

10:35:52 20

A. Yes.

10:35:54 21

Q. That we just discussed?

10:35:56 22

A. Yes.

10:35:58 23

Q. Could you put a checkmark in the lane

10:36:00 24

that your vehicle was in while you were stopped

25

at this traffic light?

10:36:00 1

MICHAEL R. PHILLIPS

10:36:08 2

A. Yes.

10:36:10 3

(Witness complies.)

10:36:12 4

Q. You put an X there?

10:36:12 5

A. Yes.

10:36:14 6

Q. I asked you --

10:36:16 7

A. Is that what you asked me to do?

10:36:20 8

Q. I asked you to make a checkmark, but

10:36:20 9

I need the record to reflect what you put. You

10:36:20 10

put an X there?

10:36:22 11

A. Yes.

10:36:24 12

Q. And that depicts the location that

10:36:24 13

you were stopped at this light?

10:36:26 14

A. Yes.

10:36:26 15

Q. And that is on Plaintiff's Exhibit 1?

10:36:28 16

A. Yes.

10:36:30 17

MR. BUTLER: It depicts the lane.

10:36:32 18

MR. KAPLEN: The lane, okay.

10:36:38 19

Q. Did you understand that when this

10:36:40 20

light turned green for the flow of traffic on

10:36:44 21

West 37th Street, that if there were any

10:36:48 22

pedestrians waiting to cross Ninth Avenue they

10:36:48 23

would also have a green signal in their favor?

10:36:52 24

A. Yes.

25

Q. And you understand that pedestrians

10:36:54 1

MICHAEL R. PHILLIPS

10:36:56 2

crossing Ninth Avenue would have the right of way
over your vehicle?

10:36:56 3

10:36:58 4

A. Yes.

10:37:02 5

10:37:06 6

10:37:10 7

10:37:14 8

10:37:16 9

Q. And you understand that it was your
obligation to yield to those pedestrians who were
crossing Ninth Avenue in either going westbound
or eastbound, you had an obligation to yield the
right of way to those pedestrians?

10:37:18 10

A. Yes.

10:37:20 11

10:37:24 12

10:37:26 13

10:37:28 14

Q. While you were in the process of
making this left turn, did you anticipate that
there might be any pedestrians crossing Ninth
Avenue at this location?

10:37:30 15

10:37:30 16

10:37:34 17

A. Yes, I stopped when the second car
proceeded to go forward and I didn't see anyone
in the crosswalks at all.

10:37:36 18

Q. Did you look left as well as right.

10:37:38 19

A. I looked left, right, forward.

10:37:40 20

10:37:40 21

Q. In addition to walking in the
crosswalk itself did you look on the curb?

10:37:42 22

A. No.

10:37:44 23

10:37:44 24

Q. So you don't know if there were any
pedestrians on the curb?

25

A. I have no idea, I don't know.

10:37:48 1

MICHAEL R. PHILLIPS

10:37:50 2

Q. As you were making your turn, did you

10:37:52 3

continue to look to see if there were any

10:37:56 4

pedestrians in the crosswalk either crossing

10:37:58 5

Ninth Avenue westbound or crossing Ninth Avenue

10:37:58 6

crossing eastbound?

10:38:00 7

A. I didn't see any.

10:38:00 8

Q. You looked?

10:38:02 9

A. I looked.

10:38:02 10

Q. And you didn't see anybody crossing

10:38:02 11

either way?

10:38:06 12

A. No, sir.

10:38:08 13

Q. And that was -- and you kept looking

10:38:08 14

until you heard this bang?

10:38:10 15

A. Yes.

10:38:12 16

Q. And you never saw anybody?

10:38:14 17

A. Never saw a person.

10:38:16 18

Q. Never saw anybody walking in the

10:38:16 19

crosswalk anywhere?

10:38:18 20

A. No.

10:38:20 21

Q. Did you see anybody walking outside

10:38:20 22

of the crosswalk crossing Ninth Avenue?

10:38:44 23

A. No.

10:38:48 24

Q. As you were looking anticipating that

25

there might be pedestrians crossing Ninth Avenue,

10:38:50 1

MICHAEL R. PHILLIPS

10:38:56 2

was your view obstructed in any way?

10:39:06 3

A. No, not to my knowledge, no.

10:39:08 4

Q. Other than this evening did you take

10:39:08 5

any special precautions of any kind because of

10:39:10 6

the road or weather conditions?

10:39:12 7

A. Yes.

10:39:12 8

Q. What special precautions did you

10:39:14 9

take?

10:39:18 10

A. Driving slow, carefully making sure

10:39:20 11

that everything was working on my truck safely.

10:39:24 12

Make sure that the windows were not fogged up.

10:39:28 13

Everything was clear, clean, the snow was off my

10:39:32 14

truck, the outside review mirrors were wiped

10:39:36 15

down, the windshield, back window and the back of

10:39:40 16

my truck was wiped down clear of any snow debris.

10:39:42 17

Q. Was your windshield clear of snow

10:39:42 18

debris as you were making this turn?

10:39:50 19

A. Yes, it was.

10:39:54 20

Q. One of the questions that was asked

10:40:00 21

of you at the scene was what was the cause of the

10:40:02 22

accident and in parentheses it says as part of

10:40:04 23

that answer "the other two cars that went

10:40:12 24

straight".

25

A. Yes.

10:40:14 1

MICHAEL R. PHILLIPS

10:40:18 2

Q. What manner do you claim that these

10:40:20 3

two cars that went straight were in some way a

10:40:22 4

cause of this accident?

10:40:24 5

A. The second car because it had its

10:40:28 6

left blinker and I was watching the car to

10:40:30 7

proceed to make a left and he did not and he

10:40:32 8

proceed to go straight away.

10:40:34 9

Q. How in your opinion was that a cause

10:40:36 10

of you striking a pedestrian?

10:40:38 11

MR. BUTLER: Note my objection to

10:40:40 12

the form of the question.

10:40:42 13

Q. How was that in your opinion a cause

10:40:46 14

of this incident taking place?

10:40:50 15

A. Stopping quickly, watching the second

10:40:52 16

car go and not seeing anybody in the crosswalk or

10:40:58 17

anywhere around my truck.

10:41:00 18

Q. What do you mean stopping quickly?

10:41:04 19

A. Because the second car looked like it

10:41:08 20

was making a left turn and it went straight

10:41:12 21

instead, so as I was proceeding assuming that the

10:41:14 22

car, the second car was going to make a left, so

10:41:16 23

I had to stop the truck to let that car past and

10:41:18 24

I proceeded to go and I heard the loud bang.

25

Q. After you began to move to make this

10:41:22 1

MICHAEL R. PHILLIPS

10:41:22 2

left turn, there came a point in time that you

10:41:24 3

stopped your vehicle?

10:41:26 4

A. Yes.

10:41:28 5

Q. Where was your vehicle in

10:41:28 6

relationship to this intersection when you

10:41:28 7

stopped it?

10:41:32 8

A. I don't know.

10:41:34 9

Q. Were you in any way into Ninth Avenue

10:41:34 10

already?

10:41:38 11

A. Yes, partially Ninth Avenue.

10:41:48 12

Q. How many lanes of Ninth Avenue did

10:41:48 13

you traverse when you stopped your vehicle?

10:41:48 14

A. I don't know.

10:41:48 15

Q. Was it at least one lane?

10:41:48 16

A. Yes.

10:41:48 17

Q. At least two lanes?

10:41:48 18

A. Possibly.

10:41:50 19

Q. Why did you stop your vehicle?

10:41:54 20

A. To let the second car go because I

10:41:54 21

realized that he was not making a left turn on to

10:41:56 22

Ninth Avenue.

10:41:56 23

Q. When you stopped your vehicle, did

10:41:58 24

you have a clear visibility of this intersection?

25

A. No.

10:42:00 1

MICHAEL R. PHILLIPS

10:42:02 2

Q. In what way was your view --

10:42:04 3

A. Snow --

10:42:10 4

Q. Let me finish my question. In what

10:42:10 5

way was your view of this intersection obstructed

10:42:12 6

when you stopped?

10:42:14 7

A. The snow, the weather, snowing very

10:42:16 8

heavy, visibility was not great, but it was

10:42:18 9

passable.

10:42:20 10

Q. Before you began to move again, did

10:42:20 11

you take a look to your left?

10:42:22 12

A. I don't know.

10:42:26 13

Q. Did you take a look to your right?

14

A. I was making a left-hand turn, I

10:42:30 15

don't know.

10:42:34 16

Q. You understand the pedestrians could

10:42:36 17

be crossing Ninth Avenue from either your left or

10:42:36 18

your right before you again proceeded to move?

10:42:38 19

A. Yes.

10:42:40 20

Q. And you understood that these

10:42:40 21

pedestrians would have the right of way?

10:42:42 22

A. Yes.

10:42:44 23

Q. And they would also be having a green

10:42:44 24

light?

25

A. Yes.

10:42:46 1

MICHAEL R. PHILLIPS

10:42:46 2

Q. And you don't know if you looked to

10:42:46 3

see them?

10:42:48 4

A. I did not see anyone.

10:42:52 5

Q. Did you look?

10:42:54 6

A. I don't know if I looked or not.

10:42:56 7

Q. So you don't know if you saw anybody

10:42:56 8

because you don't remember if you looked?

10:42:58 9

A. I did not see anyone.

10:42:58 10

MR. BUTLER: Note my objection to

10:43:04 11

the form of the question.

10:43:08 12

Q. When you started again to move after

10:43:14 13

you stopped for this vehicle who what is not

10:43:16 14

making its left turn, where were you looking?

10:43:20 15

A. Looking straight away toward the

10:43:24 16

entrance to the Lincoln Tunnel.

10:43:26 17

Q. At any time while your vehicle was

10:43:28 18

moving, did you skid?

10:43:30 19

A. No.

10:43:34 20

Q. When you applied your brake to stop

10:43:38 21

for this vehicle who you said you anticipated

22

making this left turn, did your vehicle skid in

10:43:38 23

any way?

10:43:42 24

A. No.

25

Q. Did you have any problem stopping

10:43:42 1

MICHAEL R. PHILLIPS

10:43:42 2

your vehicle?

10:43:48 3

A. No.

10:43:50 4

Q. After you began moving again after

10:43:58 5

you stopped for this other vehicle, how far did

10:44:02 6

your vehicle travel before you heard this sound?

7

A. Maybe five feet, six feet, maybe. I

10:44:06 8

don't know.

9

Q. Did you have your foot on the gas in

10:44:06 10

any way?

10:44:08 11

A. Very little, yes.

10:44:10 12

Q. What speed were you going?

10:44:36 13

A. Approximately three miles an hour.

10:44:38 14

Q. After you heard the sound in front of

10:44:38 15

your vehicle, did you ever sound your horn?

10:44:42 16

A. No.

10:44:44 17

Q. Did you ever attempt to apply your

10:44:44 18

brakes before you heard the sound?

10:44:48 19

A. No.

10:44:50 20

Q. After you came -- I know you came to

10:44:50 21

a stop so you had to apply your brakes and you

10:44:52 22

started moving again?

10:44:52 23

A. Yes.

10:44:56 24

Q. From the time you started moving

25

again until you heard this sound, did you ever

10:44:58 1

MICHAEL R. PHILLIPS

10:44:58 2

attempt to stop again?

10:45:32 3

A. No.

10:45:36 4

Q. From the time that you left the

10:45:42 5

accident scene, did you ever attempt to ascertain

10:45:42 6

that the condition of this girl that you saw on

10:45:44 7

this ground?

10:45:44 8

A. I have asked and I got no response

10:45:46 9

from anyone.

10:45:48 10

Q. From who?

10:45:50 11

A. I asked the police and they didn't

10:45:52 12

give me any response.

10:45:52 13

Q. Was that that same day or some other

10:45:54 14

day?

10:45:58 15

A. It was the same night after they had

10:46:00 16

taken her to the hospital.

10:46:00 17

Q. Did you accompany the police

10:46:00 18

anyplace?

10:46:04 19

A. No.

10:46:04 20

Q. Where did you go from the scene?

10:46:06 21

A. I went home.

10:46:08 22

Q. After you went home, did you ever

10:46:10 23

attempt to ascertain the condition of this girl?

10:46:14 24

A. Not when I got home that night, no.

25

MR. BUTLER: Note my objection to

10:46:16 1

MICHAEL R. PHILLIPS

10:46:16 2

the form of these questions. You may answer

10:46:22 3

them.

10:46:22 4

Q. At any time after you went home, did

10:46:24 5

you ever attempt to ascertain the condition of

10:46:24 6

this girl?

10:46:30 7

A. No.

10:46:32 8

Q. When you saw this girl on the ground,

10:46:34 9

did you observe her bleeding from anyplace?

10:46:42 10

A. I did not.

10:46:44 11

Q. What if anything did you observe the

10:46:46 12

person that she was with saying?

10:46:48 13

A. Pardon?

10:46:50 14

Q. The person that she was with, this

10:46:56 15

young man, what if anything did you hear him say?

10:47:14 16

A. I did not hear him say anything.

10:47:20 17

Q. Before you heard the sound on the

10:47:22 18

left front side of your vehicle, did you see

10:47:24 19

anybody at all crossing in front of your vehicle

10:47:24 20

from right to left?

10:47:30 21

A. No.

10:47:30 22

MR. KAPLEN: Thank you, I have no

10:47:30 23

further questions.

10:47:36 24

MR. BUTLER: Thank you.

25

THE VIDEOGRAPHER: The time is 10:47

10:47:40 1

MICHAEL R. PHILLIPS

10:47:44 2

a.m. and this marks the end of tape 1 and the end

10:47:50 3

of the deposition. We are off the record.

4

(TIME NOTED: 10:41 A.M.)

5

6

7

MICHAEL R. PHILLIPS

8

9

Subscribed and sworn to before me

10

this _____ day of _____, 2007.

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STATE OF NEW YORK

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COUNTY OF NEW YORK

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5

I wish to make the following changes, for

6

the following reasons:

7

PAGE LINE

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REASON:

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STATE OF NEW YORK)

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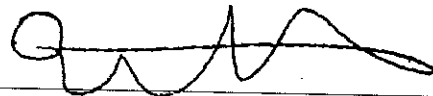
COUNTY OF NEW YORK)

I, WILLIAM VISCONTI, a Shorthand
Reporter and Notary Public within and for the
State of New York, do hereby certify:

That MICHAEL R. PHILLIPS, the witness
whose deposition is hereinbefore set forth, was
duly sworn by me and that such deposition is a
true record of the testimony given by the
witness.

I further certify that I am not
related to any of the parties to this action by
blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 11 day of Sept, 2007.



WILLIAM VISCONTI

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